

THE STATE OF TEXAS           §  
  §  
  §  
COUNTY OF FORT BEND       §

**DEVELOPMENT AGREEMENT  
(MCCRARY MEADOWS)**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as the "County"), a body politic acting herein by and through its Commissioners' Court, and Ventana Development McCrary, Ltd., a Texas limited partnership authorized to conduct business in the State of Texas (hereinafter referred to as "Owner")

WHEREAS, McCrary Road is a public road maintained by the County that adjoins land owned by Owner (the "Owner Property"), as shown on Exhibit "A" attached hereto and incorporated herein for all purposes; and

WHEREAS, Brandt Road is a proposed public road on the County's Major Thoroughfare Plan that adjoins land owned by Owner, as shown on Exhibit "A" attached hereto and incorporated herein for all purposes; and

WHEREAS, County proposes to make certain improvements to McCrary Road from FM 359 to North McCrary Road, and Brandt Road from McCrary Road to Precinct Line Road (hereinafter referred to as the "Project"); and

WHEREAS, Owner proposes to develop Owner Property adjacent to a portion of the improved McCrary Road and Brandt Road; and

WHEREAS, County and Owner agree that Owner Property will substantially benefit from the construction of the Project; and

WHEREAS, Owner has agreed to participate with County in the construction of the Project; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to participate in the construction of the Project, as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and Owner agree as follows:

1. Description of Project. The Project consists of the construction of certain improvements related to the expansion of McCrary Road and Brandt Road, including without limitation, the following:

- A. McCrary Road Phase I – Four-lane, curb & gutter, boulevard with open ditch, from FM 359 to Clayhead Road.
  - B. McCrary Road Phase II – Four-lane, curb & gutter boulevard from Clayhead Road to Brandt Road with storm sewer system. Sidewalk will be constructed along the east side of the roadway.
  - C. McCrary Road Phase III – Four-lane, curb & gutter boulevard from Brandt Road to North McCrary Road with storm sewer system. Sidewalk will be constructed along the east side of the roadway.
  - D. Brandt Road – Concrete 41' wide curb & gutter roadway. Sidewalks will not be constructed with the project as the lot grading may not be completed. Sidewalk will be constructed on both sides of the roadway.
2. County's Responsibilities
- A. Design – County shall be responsible for managing the design and permitting for the Project. County shall provide a copy of the plans for the Owner to review with each submittal to the County.
  - B. Right-of-way acquisition – County shall obtain appraisals, conduct negotiations, and obtain right-of-way needed for McCrary Road Phases I, II and III, except for land in which the Owner or a related entity owns a majority interest. The County shall also be responsible for acquiring the land needed for detention for McCrary Road Phase I based on the final design.
  - C. Construction - County shall be responsible for bidding, construction, and construction management for the Project. The construction will include sidewalks where final grading has occurred on the adjacent residential lots. Where final grading has not occurred, the Owner will be responsible for the sidewalk construction.
  - D. Financial Obligation – County shall be responsible for costs associated with the Project except those outlined in Section 3, Owner's Responsibilities.
  - E. Prior to awarding the contract to construct the Project, the County will provide the Owner with an estimate of the total Project cost based on the Project bid and a determination of the Owner's contribution. The County will provide a final accounting upon substantial completion of the Project based on actual costs. The County will return any unused portion of the Owner's contribution if the Project is under budget, or request payment for additional funds if the actual Project costs exceed the estimated amount.
3. Owner's Responsibilities
- A. Roadway Construction
    - i. Owner shall provide all designs and results of any studies related to the Project completed or in progress as of the effective date of this Agreement for use by the County in development of the Project.

- ii. Detention requirements for the ultimate roadway adjacent to the Owners Property will be provided by the Owner. Owner shall be responsible for transferring the maintenance obligation for the storm sewer constructed for the Project to a municipal utility district.
- iii. Owner shall donate any additional property outside the County's existing right of way, as defined by separate instrument or through prescriptive rights, necessary for a 100' right of way for McCrary Road within Owner Property and any additional right of way required at intersections based on the final design. Such additional right of way shall include the right of way required for a right turn lane from northbound McCrary Road to Brandt Road, as determined by the final design.
- iv. Owner shall be responsible for construction of sidewalks not constructed by the County per Section 2.C. and maintenance of the sidewalks constructed for the Project. Owner shall transfer the maintenance obligation through an agreement with a home/property owners' association. In no event shall County be responsible for maintenance of any sidewalks installed under this Agreement.
- v. Owner will donate any necessary property for the right of way within Owner Property for Brandt Road, as determined by the final design. If additional right of way is needed beyond what is initially included in the plat, the right of way shall be dedicated to the public through a separate instrument.

**B. Financial Obligation**

- i. Owner is responsible for 50% of all costs associated with design and construction of McCrary Road Phase II between Clayhead Road and Brandt Road based on current property ownership.
- ii. Owner is responsible for 100% of all costs associated with design and construction of McCrary Road Phase III between Brandt Road and North McCrary Road.
- iii. Owner is responsible for 100% of all costs associated with design and construction of Brandt Road from McCrary Road to Precinct Line Road, including transitions.
- iv. If the Owner obtains more property adjacent to the Project at any time in the future, the Owner shall reimburse the County for design, construction and right of way costs on a pro-rate share based on the linear feet of roadway frontage prior to subdivision plats being approved or Development Permits being issued if platting is not required.

**4. Payment schedule**

- A. . The general plan for this area contains approximately 1,100 single family residential lots. As of the date of this Agreement, the Owner has platted and fully developed 493 lots.

- B. The Owner has approximated that there are 740 lots that would be subject to this Agreement (123 existing and 617 future lots).
  - C. Upon receiving bids for the construction of the Project, the County will determine which construction quantities are adjacent to Owners Property to determine the Owner's share of the Project for McCrary Road from Clayhead Road to North McCrary Road, and Brandt Road from McCrary Road to Precinct Line Road. This total cost will then be divided by 740 to get a per lot cost.
  - D. The County will determine the number of lots that have been platted at the time of Project bidding. Prior to awarding to contract to construct the Project, the County will submit a request for payment to the Owner based on the per lot cost determined in subsection C above.
  - E. Upon substantial completion of the Project, the County will provide a final accounting of the Project and will determine if there are any changes to the per lot cost. If the per lot cost is less than the amount originally determined by the County, a refund will be provided to the Owner based on amounts already paid to the County. The amount per lot calculated in subsection C will be recalculated based on the final accounting and paid as such on a go forward basis. If the per lot cost exceeds the amount originally determined by the County, the Owner shall remit an additional payment for the difference to the County based on amounts already paid to the County. The amount per lot calculated in subsection C will be recalculated based on the final accounting and paid as such on a go forward basis.
  - F. As the Owner submits future plats to the County for approval, payment based on the per lot cost plus interest started at the substantial completion date of the Project. Payment will be submitted to the County prior to the County approving the plat until 95% of the lots have been submitted for plat approval. When 95% of the lots are submitted for plat approval or if there are any remaining lots that have not been submitted for plat approval within three years of completion of the Project, the remaining amount will be due from the Owner to the County. The Owner can also pay the balance early to eliminate future interest costs. The interest will be based on the borrowing cost for the Mobility Bonds which is currently estimated at 3.75% per year.
  - G. In the event that Owner obtains additional property in the vicinity of the Project, a per lot cost will be determined based on the roadway frontage using the method in Section 4 based on the cost determined in Section 3.b.iv plus right-of-way and detention costs.
5. Blade Sign in McCrary Esplanade.
- A. County agrees to allow Owner to construct a McCrary Meadows monument sign in the esplanade at the intersection of McCrary Road and FM 359. The sign must fit within the ultimate median.

- B. Any and all such maintenance of such sign shall be the sole responsibility of the McCrary Meadows HOA.
  - C. Owner and County understand and agree that the Blade Sign is subject to removal or relocation at the Owner's cost necessary for any future widening projects on McCrary Road.
6. Clayhead Road and North McCrary Road Drainage.
- A. Owner will accommodate the drainage needs of the County on Clayhead Road and North McCrary Road (31 CFS and 62 CFS respectively) into McCrary Meadows storm water system.
  - B. Subject to the approval of the Fort Bend County Drainage District, County will abandon the 100' temporary drainage easement that runs north/south on the east side of Owner Property.
7. Disclaimer/Waiver of Damages/Liability.
- A. Owner acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Project, in whole or in part
  - B. Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Project by any certain date and/or as set forth in this Agreement.
  - C. Owner hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, solely and directly, the negligence or willful misconduct of County or its authorized officers, agents, representatives or employees.

8. **PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**A. OWNER ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY OWNER TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:**

- i. TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- ii. VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;**
- iii. NUISANCE; AND/OR**
- iv. CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

**B. OWNER RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**C. OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**D. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

9. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Project only. Further, this Agreement does not waive or limit any of the obligations of Owner to County under any other order whether now existing or in the future arising.

10. Default. In the event Owner fails to comply with any of the provisions of this Agreement within thirty (30) business days after Owner's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

A. to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against the Owner and/or the Property; and/or

B. to refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or

C. to refuse to finally accept the Owner Property and/or any portion thereof; and/or

D. to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

11. Miscellaneous.

A. Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County Engineering  
Attention: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Owner, to:

Ventana Development McCrary, Ltd.  
Attention: Jim Grover, Vice President  
410 Brooks Street  
Sugar Land, Texas 77478

B. Assignment. This Agreement is not assignable by Owner without the prior written consent of County, which consent shall not be unreasonably withheld.

C. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

D. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

E. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

F. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

G. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

H. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

I. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

J. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

K. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

L. Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

M. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

N. Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

O. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Owner and/or its authorized representatives.

P. Owner's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

Q. Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 7 and 8 herein are conspicuous, and the parties have read and understood the same.

R. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Laura Richard, County Clerk

Approved:

  
\_\_\_\_\_  
J. Stacy Slawinski, P.E., County Engineer

OWNER:

VENTANA DEVELOPMENT MCCRARY, LTD.

By: 

Name: JAMES B. GROVER JR

Title: CO-MANAGER

Date: 1/30/19

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# EXHIBIT A

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COST RESPONSIBILITY  
100% COUNTY

(SUBJECT TO OWNER ACQUIRING ADDITIONAL PROPERTY)

COST RESPONSIBILITY  
50% COUNTY/50% OWNER

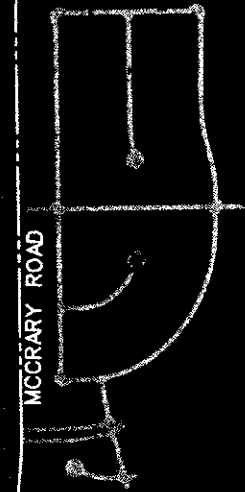
(SUBJECT TO OWNER ACQUIRING ADDITIONAL PROPERTY)

COST RESPONSIBILITY  
100% OWNER

MCCRARY ROAD

CLAYHEAD ROAD

MCCRARY ROAD



BRANDT ROAD

MCCRARY ROAD

COST RESPONSIBILITY  
100% OWNER  
ACTUAL ALIGNMENT TO BE COORDINATED WITH OWNER

PRECINCT LINE ROAD

MCCRARY ROAD DEVELOPMENT AGREEMENT  
EXHIBIT A

0 500 1000

SCALE: 1" = 500'